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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PETER T. SANTILLI,

Defendant,

CASE NO. 2:16-CR-00046-GMN-PAL

**AMENDED REPLY TO GOVERNMENT'S RESPONSE IN OPPOSITION TO
SANTILLI'S MOTION FOR REVIEW OF THE DETENTION ORDER**

Defendant PETER T. SANTILLI, by and through his counsel Chris T. Rasmussen, Esq.
submits the following Reply.

Dated this 6th day of May, 2016

Respectfully Submitted,

RASMUSSEN & KANG, LLC.

/s/ Chris T. Rasmussen

Chris T. Rasmussen, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

The Government Unjustly Discounts Santilli's Role In The Independent Media In Previous Detention Hearings To Suggest He Is A Danger

The Government has made an effort to diminish Santilli's role as a journalist. They claim he merely runs a blog. The Department of Justice has specific guidelines regarding the prosecution, gathering of evidence and arresting members of the media.

9-13.400 Obtaining Information From, or Records of, Members of the News Media; and Questioning, Arresting, or Charging Members of the News Media.

In January 2015, the Attorney General issued an updated policy, reflected in 28 C.F.R. 50.10, regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media. The updated policy is intended to ensure that, in determining whether to seek information from, or records of, members of the news media, the Department strikes the proper balance among several vital interests: protecting national security, ensuring public safety, promoting effective law enforcement and the fair administration of justice, and safeguarding the essential role of the free press in fostering government accountability and an open society. See Memorandum from the Attorney General to All Department Employees (Jan. 14, 2015); Memorandum from the Attorney General to All Department Employees (Feb. 21, 2014); Report on Review of News Media Policies (July 2013). To achieve this balance, the policy mandates robust review and evaluation by the Criminal Division of requests for authorization to use covered law enforcement tools, and oversight by senior Department officials.

Has the government prosecutors violated their own regulation in their handling of Santilli? This question has yet to be answered as discovery has not been produced.

Santilli Overcomes The Presumption Under The Bail Reform Act As His Speech Is Protected And No Violence Took Place

The government in their Response outlines six reasons as to why Santilli is a prominent figure in the alleged conspiracy and cannot overcome the presumption outlined in the Bail Reform Act:

Government Assertion (1): [Santilli] recruiting gunmen to come to Bundy Ranch to show force against law enforcement officers, culminating in the assault on April 12.

Santilli Rebuttal: Santilli broadcasts on an internet radio show in which he is the

1 main host. His show covers a wide range of topics which included the situation at
2 Bundy Ranch. He has produced and broadcast in excess of 1500 episodes not
3 related to public land issues. The Bundy Ranch news was brought to his attention
4 by his producer who directed Santilli to travel out to the scene.

5 The language in the government's indictment regarding Santilli's speech is
6 protected under *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). The language that
7 is quoted in the indictment comports with lawful activity. Santilli's request for people
8 to assemble and protest the BLM's conduct at Bundy Ranch and if they are "legally
9 allowed to carry in Nevada" to bring your weapon to demonstrate. (Indictment,
10 Paragraph 62). Open carry protests are lawful and conducted throughout the
11 United States as a protected form of First Amendment political speech.

12 **Government Assertion (2):** [Santilli] threatening violence to law enforcement
13 officer for doing their jobs.

14 **Santilli Rebuttal:** Santilli was a peace maker on April 9, as depicted in the video
15 linked in our moving papers. This video was the catalyst for people to protest at
16 Bundy Ranch. This video was broadcast by Fox News and viewed throughout the
17 country on other mainstream media networks. Santilli is heard throughout the video
18 urging people to "Comply" and calm down. He never once asks people to come to
19 Bundy Ranch in this video. The BLM is blaming Santilli, but it was their over
20 reaction to the Bundy family members, using police dogs and becoming physical
21 with a pregnant lady that sparked the outrage, not Santilli's speech.

22 Just prior to the "stand off", Santilli records a conversation between him and the
23 BLM agent in charge. See <https://www.youtube.com/watch?v=9p0YemhFnw8>

24 This audio recording which was broadcast on Santilli's show and other outlets
25 depicts the peaceful nature of Santilli.¹ Throughout, the discussion between the two

26
27 ¹Santilli's radio personality is much different than his real life demeanor. Both the
28 video of the April 9 incident, and the recorded conversation with BLM SAC Love
highlights this difference. Santilli is peaceful and was intent on defusing the situations
and avoiding tragedy such as the ones at Ruby Ridge and Waco.

1 men, the tone was respectful. The Court can listen to this eleven minute recording
2 and recognize the intent of Santilli to act as a mediator between the two sides as the
3 large numbers of people were arriving to protest.

4 **Government Assertion (3):** [Santilli was] leading an assault on a BLM convoy
5 engaged in impoundment operation on April 9, 2017.

6 **Santilli Rebuttal:** The people gathered had learned of the killing of cattle and
7 damaged water pipes at the direction of BLM forces. (Photo Attached as Exhibit
8 A & B). Santilli in the video asks for a supervisor. Santilli never possessed any type
9 of weapon or used violence against anyone. Santilli has no history of violence. In
10 fact, in the video Santilli never tells a people to come to Bundy Ranch. His
11 commentary is specifically addressing the actions of the BLM. Santilli's speech was
12 not the catalyst for citizens to travel to Bundy Ranch, it was the video's coverage
13 throughout mainstream media.

14 **Government Assertion (4):** [Santilli] was conducting reconnaissance of hotels
15 where BLM officers and employees were staying during impoundment operation.

16 **Santilli Rebuttal:** Santilli was a journalist who broadcast on a daily basis. There
17 was information that the local motels were filled up with BLM and contracted Black
18 Water type contractors. Santilli travelled to a motel and asked if there were any
19 rooms available to be able to broadcast lodging availabilities to the arriving
20 protesters that were coming to protest on private property at Bundy Ranch.

21 **Government Assertion (5):** [Santilli was] threatening BLM SAC on April 11 and
22 delivering an ultimatum to leave the Impoundment Site.

23 **Santilli Rebuttal:** The above link is the recording that was cordial and was more
24 of a mediation between the parties. The idea that the protestors and BLM could be
25 at a confrontation concerned Santilli and he took it upon himself to speak with the
26 agent in charge to defuse the situation. The Sheriff of Clark County arrived and to
27 Bundy Ranch and was photographed on the stage used by protestors. (See Photo
28 of Gillespie Ex. C). Gillespie is on stage without a weapon out of his holster

1 speaking to the crowd of protesters.

2 <https://www.youtube.com/watch?v=3wru1pYvE4o>

3 The photo shows a relaxed Gillespie in front of the protestors. Gillespie has been
4 critical of the BLM's handling of the protestors that were lawfully assembled in which
5 he was quoted.

6 **Gillespie: "I go up there to talk to Cliven (before the roundup), see if I can talk**
7 **some understanding to him, and the boys are there," Gillespie said. Further,**
8 **he learned the BLM had no place to take the cattle.**

9 **"That's when I call the BLM and say my folks are not participating in this,"**
10 **Gillespie said. "'You're telling me things that I'm finding out not to be true. I**
11 **don't like the way this is going, and I think you need to put this off and look**
12 **at the fall.'"**

13 **"I think if anybody would look at how they handled the protesting with the use**
14 **of Tasers and police dogs, anyone who had been in policing would question**
15 **those tactics," he said. "And I believe that led to the heightened interest and**
16 **escalating the situation."**

17 [http://lasvegassun.com/news/2014/jul/02/sheriff-breaks-silence-says-blm-bundy-share-](http://lasvegassun.com/news/2014/jul/02/sheriff-breaks-silence-says-blm-bundy-share-blame-/)
18 [blame-/](http://lasvegassun.com/news/2014/jul/02/sheriff-breaks-silence-says-blm-bundy-share-blame-/)

19 **Government Assertion (6):** [Santilli was] inciting Followers and gunmen during
20 Bundy's Rally on the morning of April 12, moving to the Impoundment Site upon
21 Bundy's command at the Rally, and participating in assault on the Impoundment
22 Site on April 12 and the threats of force and violence against law enforcement
23 officers.

24 **Santilli Rebuttal:** Santilli was never at the site of the stand off. He was on the
25 median talking to local law enforcement officials. The government can not present
26 any evidence that a single gunmen traveled to Bundy Ranch as a result of Santilli's
27 speech. There were no gunmen around Santilli, the only guns that were around
28 were in the holsters of local law enforcement who were photographed walking

1 through the crowd. (See Attached Photos EX D).

2 Santilli's role at Bundy Ranch was that of a journalist. He broadcasted for people
3 to lawfully assemble and assemble on private property with their weapons if they
4 were lawfully allowed to carry. Santilli's speech is protected advocacy.

5 Speech that may look like incitement is merely "abstract advocacy" if it is not
6 intended to cause imminent lawless action. Relatedly, the fact that no one actually
7 took imminent lawless action based on defendant's speech is evidence that the
8 speech was merely abstract advocacy). *McCoy v. Stewart*, 282 F.3d 626, 632 n.
9 6 (9th Cir. 2002).

10 **Santilli Further Overcomes The Presumption As The Speech Is Protected And**
11 **Santilli Has Zero History of Violence**

12
13 Although the recent decision in *Elonis v. United States*, 135 S. Ct. 2001
14 (2015), deals with the issue of threats, it never addressed the constitutional
15 protection afforded by the First Amendment. The Court's ruling was limited to finding
16 that the federal threat statute at issue in that case required a showing that the
17 defendant intended to threaten the alleged victim, and that the fact that the victim
18 reasonably believed he had been threatened was not sufficient. Given this disposition,
19 the Court held that it was not necessary to consider any First Amendment issues, *id.* at
20 2012, and it did not discuss what expression constitutes a "true threat" outside of
21 the protection of the constitution.

22 In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Court made it clear that
23 the First Amendment protects speech that advocates violence, so long as the
24 speech is not directed to inciting or producing imminent lawless action and is not
25 likely to incite or produce such action. *Accord Planned Parenthood of*
26 *Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1071 (9th
27 Cir. 2002) (*en banc*).

28 Similarly, in *Watts v. United States*, 394 U.S. 705 (1969), the Court ruled that

1 under a statute making it a crime to willfully make a threat of bodily harm to the
2 president, the prosecution was required to prove that the defendant had uttered a
3 “true threat.” It went on to rule that the kind of political hyperbole engaged in by the
4 defendant did not constitute a true threat. It wrote that the decision whether an
5 utterance constitutes a true threat must be determined “against the background of a
6 profound national commitment to the principle that debate on public issues should be
7 uninhibited, robust, and wide-open, and that it may well include vehement, caustic,
8 and sometimes unpleasantly sharp attacks on government and public officials.” *New*
9 *York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

10 The language of the political arena, like the language used in labor
11 disputes, see *Linn v. United Plant Guard Workers of America*, 383 U.S. 53, 58
12 (1966), is often vituperative, abusive, and inexact. We agree with petitioner that
13 his only offense here was “a kind of very crude offensive method of stating a
14 political opposition to the President.” Santilli advocates for the government to follow
15 the Constitution on his program. He is not anti-government, as a former United States
16 Marine he took an oath to defend this country and the Constitution.

17 Santilli’s calls for action were not calls for violence. The presumption the
18 government has been rebutted as the speech is protected and not threatening. Santilli
19 never had a firearm, never raised a hand at any official. In fact, just the opposite he is
20 recorded telling people to “comply” with the BLM. The Sheriff never gave any orders to
21 suggest that anyone at Bundy Ranch had unlawfully assembled.

22 The release of Santilli by this Court will not mean “release”. Oregon has placed
23 a condition of a “half way house”. This half way house will insure that Santilli makes his
24 court appearance and acts appropriately. The government’s decision to prosecute
25 Santilli in two different Districts simultaneously will make it close to impossible to
26 maintain attorney/client contact on a regular basis if he is placed in a custodial setting.

27 28 **Conclusion**

1 We hereby request that this Court release Santilli pursuant to the conditions in
2 his Oregon case. This will allow him to be placed in a half-way house.

3
4 Dated this 6th day of May, 2016

5 Respectfully Submitted,

6 RASMUSSEN & KANG, LLC.

7 /s/ Chris T. Rasmussen

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9 _____
Chris T. Rasmussen, Esq.